

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 872 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

THAKORE K SURAJI & 1

Versus

THAKORE SHIVAJI RAJAJI & 1 .

Appearance:

MR RR VAKIL for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/11/1999

ORAL JUDGEMENT

#. Both the courts below have granted temporary injunction as prayed for by the plaintiffs-respondents and this court has not granted any interim relief in favour of petitioners-defendants.

#. However, on 24th September, 1995, this court has given directions to the plaintiffs-respondents not to transfer, alienate, encumber on the property in dispute during the pendency of this civil revision application.

Both the courts have concurrently found as a fact that the plaintiffs are in possession of suit land. They were also held to be occupiers as well as cultivators of the suit land on the basis of revenue record.

#. Much emphasis has been laid by learned counsel for the petitioners on the fact that the land has been partitioned in the year 1966 and thereafter this land was mortgaged by the defendants with the predecessor of the plaintiffs. He has shown the mortgage deed. He further contended that this mortgage was redeemed. In his submission, the first appellate court has committed illegality in holding that there is nothing on record to show that the defendants have redeemed half portion of the suit land from the plaintiffs-respondents or from deceased their father.

#. I fail to see any merits in this contention. The document of partition is not produced on record. It has taken place in 1966 and in fact it would have been a case of partition then revenue entry would have been accordingly corrected and as nothing has been produced on record to show that accordingly revenue entries were modified. So far as the mortgage deed is concerned, it is to be stated that it is an unregistered document and merely on recital therein that the property is redeemed it cannot be assumed and presumed and accepted at the stage of considering the case for grant of temporary injunction that the possession and title of the land remains with the defendants-petitioners. Both the courts below have concurrently recorded finding of fact on the basis of appreciation of evidence and in the absence of any documentary evidence as well as only evidence in the form of affidavit to show and establish the possession with the defendants, the learned trial court has rightly decided the matter against them. There is voluminous evidence on record and on appreciation thereof, both the courts have concurrently decided the case in favour of plaintiffs to which no interference can be made. In the matter of grant of temporary injunction which is a discretionary relief even the first appellate court has very limited power of interference therewith and this court under section 115 of the Civil Procedure Code has also much restricted powers of interference. After hearing the learned counsel for the petitioners and going through the order of the first appellate court, I do not find any infirmity therein. It is not open to this court in exercise of its revisional jurisdiction to reassess the evidence and interfere with the concurrent finding of fact. Reference here fruitfully may have to the decision of the apex court in the case of Mudi Gonda Chandra Mouli

Shastri v. Bhima Nepali Bikshalu reported in 1999(7) SCC 66. Further reference may also have to the decision of the apex court in the case of DLF housing and Construction (P) Ltd. New Delhi v. Sarup Singh reported in 1971 SC 2324 and in the case of Hindustan Aeronautics v. Ajit Prasad reported in 1973 SC 76.

#. In the result, this civil revision application fails and the same is dismissed. As nobody has put appearance on behalf of respondents no order as to costs. Rule discharged.

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